



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

CHARLES W. MCHAN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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CIVIL ACTION NO. 0:05-2678-HFF-BM

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE MAGISTRATE
JUDGE AND DISMISSING THE ACTION *WITHOUT PREJUDICE* AND WITHOUT
REQUIRING RESPONDENTS TO FILE AN ANSWER

This action was filed as a Section 2241 action or, in the alternative, a petition for writ of error *coram nobis*. Petitioner is proceeding *pro se*. The matter is before the Court for review of the report and recommendation (Report) of the United States Magistrate Judge in which the Magistrate Judge suggests that this action be dismissed *without prejudice* and without requiring Respondent to file an answer. The Report is made in accordance with 28 U.S.C. § 636 and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 26, 2005, and Petitioner filed his five (5) page objection memorandum on November 14, 2005. The Court has carefully considered Petitioner's objections, but finds them to be without merit. Simply stated, and as observed by the Magistrate Judge, "[s]ince the petitioner here is seeking relief from his sentence, the relief requested by the petitioner in the above-captioned matter is available, if at all, under § 2255, not § 2241." Report at 7 (citation omitted). Moreover, for the reasons stated in the Report, the petition to this Court for a writ of error *coram nobis* is improper.

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that this action must be **DISMISSED** *without prejudice* and without requiring Respondent to file an answer.

IT IS SO ORDERED.

Signed this 6th day of January, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.